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December 18, 2007

## **AGENDA ITEM 3-C**

### **TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION COMMITTEE**

- I. SUBJECT:** State Legislative Proposal: Minor Policy and Technical Amendments to Government Code
- II. PROGRAM:** Legislation
- III. RECOMMENDATION:** Staff recommends that the Board **sponsor** legislation to make minor policy and technical amendments to Government Code provisions administered by CalPERS.

### **IV. ANALYSIS:**

This proposal would make several minor policy and technical amendments to various sections of the Government Code administered by CalPERS. Staff has identified provisions requiring legislative change to ensure that the statutes administered by CalPERS are as clear and unambiguous as possible.

Specifically, this proposal would address the following issues:

#### **Employer to Report Non-Member Data**

This proposal would give the CalPERS' Board of Administration (Board) express authority to require employers to report non-member data.

The Board has the authority to require employers to furnish data concerning members or beneficiaries. Currently, employers only report payroll information for employees that are active members of a CalPERS-administered retirement program. The Board does not have the authority to require employers to report non-member data without a statutory amendment.

Collecting non-member data will assist CalPERS and employers with their reporting responsibilities which include monitoring part-time, seasonal and temporary employees who have worked less than 1,000 hours; identifying employees who should be brought into CalPERS membership immediately due to their membership history; and monitoring retired annuitants' hours worked. This increased integrity of

the data would help determine eligibility criteria sooner and reduce the number of arrears calculations.

This proposal would significantly improve school employers' ability to ensure timely enrollment of members. School members often work part-time within the county making it difficult to track part-time workers' hours for membership eligibility.

CalPERS has the ability to accept non-member data on a voluntary basis without statutory authority. However, the collection of pre-member data is only effective if all employers report their non-members.

### **Part-Time Employees**

Government Code Section 20305 defines part-time employment and gives the threshold for mandatory membership that applies to part-time employees. This threshold states that employees who work more than 125 days per year for daily employees, or 1,000 hours per year for all other types must become members of CalPERS. The language in the code might be interpreted as requiring an employee to actually exceed 125 days or 1,000 hours before mandatory membership is required. In practice however, merely reaching this threshold is sufficient to require membership. Therefore, this proposal will amend the section in order to make the actual practice clear and protect the rights of part-time employees.

Some of the section's introductory language is unclear and leads to misunderstanding by contracting agencies regarding who is affected. This proposal clarifies the intent of the code by noting that it applies to some full-time employees as well.

### **Refusal of the Board of Administration to Contract**

Existing law allows CalPERS to refuse new contracts or contract amendments submitted by a public agency for any benefit provisions that are not specifically authorized in statute, and that the Board determines if the request would adversely affect the administration of the system. This proposal would allow the Board to deny a public agency's request to initiate or amend a contract with CalPERS when that request would adversely affect the administration of the system even if the provisions are otherwise authorized under the PERL.

This amendment will grant CalPERS greater freedom in safeguarding the benefits of its members. Some agencies may attempt to enact contracts that, while technically in compliance with the PERL, may have deleterious affects on members or on the system as a whole. Under this proposal, the Board will be better able to identify and refuse such changes.

### **Compensation Earnable For Part-Time Service**

Government Code Section 20967 explains how compensation earnable is used in calculating retirement benefits based on part-time service. This proposal will clarify the definition of “compensation earnable” the same for both part-time and full-time employees.

This change will promote good governance by preventing part-time members from inflating their retirement pensions by working intermittently at a high rate of pay. This, in turn, protects the system by preventing an unfunded liability from occurring.

### **IRC Conformity**

On April 4, 2007, the U.S. Treasury and IRS released final regulations related to IRC 415. These regulations consolidated all of the statutory changes and guidance released by the IRS since comprehensive regulations were last updated in 1981. This proposal would ensure that the total amount payable to the participants in the defined benefit plan conform to the IRC limits and allow other technical changes to assure plan compliance with IRC.

### **Other Technical Changes**

This proposal also makes other technical wording and grammatical corrections and corrects or deletes inaccurate or obsolete code section references.

## **V. STRATEGIC PLAN:**

This proposal supports Strategic Goal III to develop, design, and administer benefit programs and business processes that are innovative, effective, efficient, and valued by our members, employers, and stakeholders.

## **VI. RESULTS/COSTS:**

This proposal will clarify application and administration of the statutes affecting the programs and benefits administered by CalPERS. No costs will be incurred as a result of this proposal.

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